

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

THINTINUS N. TAYLOR,  
Petitioner,

v.

BUREAU OF PRISONS,  
Respondent.

No. 2:21-cv-0227 KJN P

ORDER

Petitioner, a federal prisoner, proceeds pro se with an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2241. On August 12, 2021, petitioner filed a motion seeking reconsideration of the court's order granting respondent an extension of time to respond to the petition. Petitioner claims he did not receive the motion for extension of time, and he did not receive a docket entry confirming the filing of a proof of service, claiming the court granted the motion without confirming that the motion was served on petitioner, and alleges insufficient service of process requires this court to enter respondent's default based on respondent's alleged "failure to appear." (ECF No. 13 at 5.)

Petitioner is mistaken. Litigants are not required to separately docket a proof of service. Moreover, review of respondent's three-page motion confirms that respondent appended a certificate of service attesting to service of the motion and proposed order on July 30, 2021, to petitioner at his current address of record, FCI Herlong, P.O. Box 800, Herlong, CA 96113.

1 (ECF No. 11 at 3.) Such address matches petitioner's address of record, and is the same address  
2 the court sent petitioner the order granting the extension of time, which petitioner received. The  
3 court cannot explain petitioner's failure to receive respondent's motion, but directs the clerk to  
4 provide a copy of the motion to petitioner.

5 Moreover, petitioner is advised that Rule 4(m) of the Federal Rules of Civil Procedure is  
6 not applicable here. In a habeas action, no service of process under Rule 4 is required; rather, the  
7 court directed respondent to respond on June 11, 2021. (ECF No. 9.) Here, respondent indicated  
8 its intention to defend by filing the motion for extension of time. Thus, entry of default is  
9 inappropriate. See Rule 55(a) (default judgment is appropriate only when a party "has failed to  
10 plead or otherwise defend"). Petitioner's motion for default judgment is also inappropriate,  
11 because it is settled law that default judgments are not available in federal habeas corpus actions.  
12 See Gordon v. Duran, 895 F.2d 610 (9th Cir. 1990) (failure of the state to file a timely response to  
13 petition "does not entitle the petitioner to a default judgment"); Blietner v. Wellborne, 15 F.3d  
14 652 (7th Cir. 1994) ("default judgments are disfavored in habeas corpus cases") (collecting  
15 cases). Petitioner's motions for default and default judgment are denied.

16 Finally, petitioner appears to seek an explanation for the "good cause" the court found to  
17 grant respondent's request for extension. However, this court has discretion to grant requests for  
18 extensions of time filed by either party. Danjaq LLC v. Sony Corp., 263 F.3d 942, 961 (9th Cir.  
19 2001) ("A district court's decision regarding a continuance is given great deference" unless party  
20 prejudiced by decision). Petitioner fails to identify any prejudice he would suffer as a result of  
21 the extension of time. Under the circumstances set forth in respondent's accompanying  
22 declaration (ECF No. 11 at 2), it was not unreasonable for this court to grant respondent's first  
23 request for extension of time to file a responsive pleading. Plaintiff's motion for reconsideration  
24 is denied.

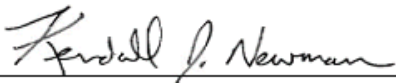
25 In accordance with the above, IT IS HEREBY ORDERED that:

26 1. The Clerk of the Court is directed to send petitioner a copy of respondent's motion for  
27 extension of time (ECF Nos. 11, 11-1.)

28 2. Petitioner's requests for default and default judgment (ECF No. 13) are denied.

3. Petitioner's motion for reconsideration (ECF No. 13) is denied.

Dated: August 25, 2021

  
KENDALL J. NEWMAN  
UNITED STATES MAGISTRATE JUDGE

/tayl0227.def.d